

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FTCA Flint Water Cases,

Case No. 17-cv-11218
(Consolidated)

_____/

This Order Relates to:

E.M. v. EPA

Honorable Linda V. Parker

_____/

**OPINION AND ORDER GRANTING PLAINTIFFS’ ORAL MOTION TO
EXCUSE E.M. FROM THE BELLWETHER PROCESS, ONLY**

This matter is before the Court on Plaintiffs’ oral motion to remove minor E.M. from the Bellwether process, made at the status conference on November 7, 2023. Pursuant to the process set forth in Case Management Order No. 3 (“CMO 3”) (ECF No. 111), E.M. was selected as a “Category 1” bellwether plaintiff—i.e., those claiming personal injuries other than wrongful death and whose dates of birth are during or after 2012. E.M.’s claims in this matter were filed by her mother; however, E.M. currently is in foster care and her current guardian(s) refuses to allow E.M. to participate in the discovery process. Plaintiffs’ counsel nevertheless believes E.M.’s mother may regain custody in the not-to-distant future and wish to continue pursuing E.M.’s claims.

Plaintiffs’ counsel therefore is unwilling to voluntarily dismiss E.M.s claims unless such dismissal is without prejudice. The United States is unwilling to agree

to anything but a dismissal *with* prejudice, however. Neither CMO 3 nor the subsequently filed Case Management Order 4 (ECF No. 172) dictate a process for a bellwether plaintiff who fails to cooperate in discovery beyond the initial fact sheets. In comparison, CMO 3 permits the United States to file a motion to dismiss if a selected plaintiff fails to cure a defect with respect to a fact sheet after the opportunity to do so has expired. (*See* ECF No. 111 Sec. 111.G.2.)

While the removal of E.M. from the bellwether process will leave only one bellwether plaintiff in Category 1, the United States was unable to identify any prejudice to it by E.M.'s removal. Neither side objects to proceeding with only one Category 1 bellwether plaintiff.

The Court therefore is **GRANTING** Plaintiffs' oral motion to remove E.M. from the bellwether process, only.

SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: November 13, 2023